

3

No. 89-1158

Supreme Court, U.S.  
**FILED**

**APR 27 1990**

JOSEPH F. SPANIOL, JR.  
CLERK

**In The**  
**Supreme Court of the United States**  
**October Term, 1989**

MERCEDEL W. MILES, INDIVIDUALLY AND AS  
ADMINISTRATRIX OF THE SUCCESSION OF  
LUDWICK ADAM TORREGANO

*Petitioner,*

versus

APEAX MARINE CORPORATION, WESTCHESTER  
MARINE SHIPPING COMPANY, INC., ARCHON  
MARINE COMPANY AND AERON MARINE COMPANY

*Respondents.*

**On Writ Of Certiorari To The United States  
Court Of Appeals For The Fifth Circuit**

**JOINT APPENDIX**

ALLAIN F. HARDIN\*  
A. REMY FRANSEN, JR.  
FRANSEN & HARDIN  
650 Poydras Street  
Suite 2030  
New Orleans, LA 70130  
Telephone: (504) 522-1188  
*Counsel for Petitioner*

\*Counsel of Record

GERARD T. GELPI\*  
RANDALL C. COLEMAN, III  
GELPI, SULLIVAN, CARROLL  
& LABORDE  
430 Notre Dame Street  
New Orleans, LA 70130  
Telephone: (504) 524-9714  
*Counsel for Respondents*

**Petition For Certiorari Filed January 8, 1990  
Certiorari Granted February 26, 1990**

## APPENDIX

## TABLE OF CONTENTS

|  | Page |
|--|------|
| (1) Relevant docket entries  |      |
| (a) United States District Court – Eastern District of Louisiana .....   | 1    |
| (b) United States Court of Appeals for the Fifth Circuit.....  | 7    |
| (2) Relevant Minute Entry (January 21, 1988) .....   | 8    |
| (3) Jury Interrogatories (January 23, 1988).....   | 9    |
| (4) Judgment, United States District Court, Eastern District of Louisiana (February 29, 1988) .....  | 14   |
| (5) Decision, United States Court of Appeals for the Fifth Circuit (September 11, 1989) (Note: Printed in the Petition for a Writ of Certiorari at page A-1) |      |

**Relevant Docket Entries**

**85-4728**

**B 3**

**JURY**

**SEAMAN CASE**

**PLAINTIFFS**

MERCEDEL W. MILES,  
INDIVIDUALLY AND  
AS ADMINISTRATRIX  
OF THE SUCCESSION  
OF LUDWICK ADAMA  
TORREGANO

**DEFENDANTS**

CLIFFORD A. MELROSE  
  
APEX MARINE CORPORA-  
TION  
  
WESTCHESTER MARINE  
SHIPPING COMPANY, INC.  
  
ABC INSURANCE  
COMPANY

**3rd Party Complt** – 10/9/86 Apex Marine Corporation  
Westchester Marine

Seafarers International Union of North America (OUT  
12-18-86)

**1st Suppl and Amending Complt** – 11-5-86

London Steamship Owners Mutual Insurance Association  
(OUT 3-29-88)

Seafarers International Union of North America (OUT  
1-20-87)

**Amended 3rd Pty Complt** – 12-18-86 Apex Marine Corp.  
& Westchester Marine

Seafarers International Union, Atlantic, Gulf Lakes, and  
Inland Waters District, A.F.L. – C.I.O. (OUT 9-8-87)

**2nd Suppl and Amended Complt** – 1-20-87

Aeron Marine Company, Seafarers International Union,  
Atlantic, Gulf Lakes and Inland Waters District, A.F.L. –  
C.I.O. (OUT 9-8-87)

**3rd Suppl & Amending Complt - 11/17/87**

No new ptys added

**CAUSE**

46 USC 688 - MARINE, PERSONAL INJURY, SEAMAN,  
JONES ACT (Death Resulting From Multiple Stab Wounds)

**ATTORNEYS**

WIEDEMANN &  
FRANSEN  
Allain F. Hardin,  
Esq.

821 Baronne Street  
NOLA 70113  
(504) 581-6180  
FOR: **MERCEDEL  
W. MILES**

GELPI, SULLIVAN, CARROLL  
& LABORDE  
Gerard T. Gelpi, TA  
Randall C. Coleman, III  
430 Notre Dame St.  
NOLA 70130 524-9714  
FOR: **APEX MARINE CORPORATION & WESTCHESTER MARINE SHIPPING CO., INC. AERON MARINE COMPANY**

GARDNER, ROBEIN & HEALEY  
Louis L. Robein, Jr., Esq.  
2540 Severn Ave., Suite 400  
Metairie, LA 70002  
(504) 885-9994  
FOR: **SEAFARERS INTERNAT'L  
UNION OF N.A.**

**DATE NR. PROCEEDINGS**

|          |    |  |
|----------|----|--|
| 10-15-85 | 1  | Complt; Issd 3 L.A.  |
| 11-18-85 | 2  | ANSWER of Apex Marine Corp and Westchester Marine Shipping Co, Inc to pltf's complt.   |
| 10-9-86  | 8  | 3rd pty complt by Apex Marine Corp & Westchester Marine Shipping agst Seafarers International Union of North America; issd (1) summs.  |
| 11-5-86  | 11 | Pltf's 1st suppl and amending petn - adding London Steamship Owners Mutual Ins and Seafarers International Union of North America as defts. Issd (2) sms.  |
| 12-18-86 | 16 | Amended 3rd pty complt by Apex Marine Corp and Westchester Marine Shipping Co subst Seafarers International Union of North America or S.I.U. for Seafarers International Union, Atlantic, Gulf, Lakes, and Inland Waters District, A.F.L.-C.I.O. |
| 1-20-87  | 20 | Pltf's 2nd suppl and amended petn-adding Aeron Marine Co and to subst for Seafarers International Union of N. A. the proper union, Seafarers Internat'l Union Atlantic, Gulf, Lakes and Inland Waters District, A.F.L.-C.I.O. Issd (2) sms.      |
| 1-28-87  | 21 | Mtn by Seafarers Internat'l Union to dismiss all claims agst it by the 3rd pty pltf's Apex Marine Corp and Westchester Marine.   |
| 2/12/87  | 23 | Answer of Apex Marine, Wechester Marine & Aeron Marine Co to second suppl & amend complt of pltf.  |
| 2-19-87  | 25 | Mtn by Seafares International Union, Atlantic, Gulf, Lakes and Inland Waters District to dismiss Pltf's complt.  |



- 9/8/87 50 ORDER & REASONS; ORDERED that mtn of Seafarers International Union, Atlantic, Gulf, Lakes & Inland Waters District AFL-CIO for order dismissing claims of Apex Marine Corp & Westchester Marine SHipping CO be GRANTED; Mtn for order dismissing claims of Mercedel Miles, individually & as administratix of the succession of Ludwick Adam Torregano be GRANTED
- 11/17/87 58 Pltf's 3rd suppl & amending petition. No new ptys added.
- 12/21/87 68 ANSWER of Apex Marine Corp, Westchester Marine Shipping Co., Inc., Aeron Marine Company & Archon Marine Company to pltf's 3rd supplemental & Amending complt.
- 1/13/88 72 Mtn by Apex Marine Corp, Westchester Marine Shipping Co., Inc., Aeron Marine Co & Archon Marine Corp.to strike.
- 1/15/88 84 Pltf's memo in opp to mtn to strike loss of society claim.
- 1/26/88 92 M.E. 1/19/88: JURY TRIAL: JURY PICKED, SWORN & INSTRUCTED: JURY EXCUSED & CONT to 1/20/88 at 10:00 A.M. (FJRH) dktd 1/27/88.
- 1/26/88 93 M.E. 1/20/88: JURY TRIAL . . . Matter CONT to 1/21/88 at 10:00 A.M. (FJRH) dktd 1/27/88.
- 1/26/88 94 M.E. 1/21/88: JURY TRIAL: Witnesses for pltf cont; . . . pltf rests; witnesses for defense; . . . defense rests; Jury excused & matter CONT to 1/22/88 at 10:30 A.M. (FJRH) dktd 1/27/88.
- 1/26/88 95 M.E. 1/22/88: JURY TRIAL: Closing argument; Ct Charge to jury; Jury retires to

- delebrate; . . . jury retns for instruction of Ct; Jury is excused. (FJRH) dktd 1/27/88.
- 1/26/88 96 M.E. 1/23/88: JURY TRIAL: Jury retires for further delebration; Jury returns with verdict; Ct orders verdict received & recorded; Jury excused subject to call. (FJRH) dktd 1/27/88.
- 2/29/88 99 JUDGMENT: in favor of pltf & agst Apex Marine Corp, Westchester Marine Shipping Co., Archon Marine Co. under Jones Act, finding defts negligent in the death of Ludwick A. Torregano; Further ORDERED that judgment in favor of Aeron Marine Co., & agst pltf, finding the vessel M/V Archon was not unseaworthy at time of incident; Further ORDERED that judgment in favor of pltf & agst Apex Marine Corp., Westchester Marine Shipping Co., & Archon Marine Co. in amt of \$140,000.00 for pain & suffering of Ludwick A. Torregano prior to his death, to be reduced by 7% or \$9,800.00, the amt of contributory negligence found on part of the deceased, Ludwick A. Torregano, together with legal interest from date of judgment until paid & all costs of these proceedings; Further ORDERED that judgment in favor of pltf & agst Apex Marine Corp, Westchester Marine Shipping Co. & Archon Marine Co. in amt of \$7,800.00 loss of support & service of decedent Ludwick A. Torregano be reduced by 7% or \$546.00, the amt of contributory negligence found on part of deceased, Ludwick A. Torregano, together with legal interest thereon from date of judgment until paid & all costs of these proceedings. Further ORDERED that judgment in favor of Apex Marine Corp,

Westchester Marine Shipping Co. & Archon Marine Co. & agst pltf individually as Administratrix of the Succession of Ludwick Adam Torregano, denying any claim for loss of society; Further ORDERED that judgment in favor of Apex Marine Corp., Westchester Marine Shipping Co. & Archon Marine Co. & agst pltf appearing on behalf of decedent's father, Joseph Torregano, denying Joseph Torregano any claim for loss of services; . . . (FJRH) dktd 2/29/88.

- 3/14/88 100 Mtn of Apex Marine Corp., Westchester Marine Shipping Co., Inc., Aeron Marine Co. & Archon Marine Co. for judg n/w/s/ the verdict; hrg set 5/4/88 at 10:00 am bfr Judge.
- 3/14/88 101 Pltf's mtn for judg n/w/s the verdict, alternatively to amend judg, or alternatively for new trial; hrg set 5/4/88 at 10:00 a.m..
- 5/6/88 105 M.E. 5/4/88 - Hrg on pltf's mtn for judg NOV, alt to amend judg or alt for new trial & mtn of Apex Marine Corp., Westchester Marine Shipping Co., Aeron Marine Corp., & Archon Marine Co. for judg NOV - mtns DENIED. (FJRH) dktd 5/6/88.
- 5/11/88 106 Pltf's *Ntc of appeal* from the judg entered 2/29/88 & from orders & rulings adverse to petitioner entered by Ct during trial of 1/19/88 thru 1/23/88.
- 5/25/88 107 Ntc of Cross-Appeal by Apex Marine Corp, Westchester Marine Shipping Co., Inc. & Archon Marine Company from Order denying Mtn by defts' for judg of 5/6/88 & from final judg of 2/29/88.
- 6-29-88 XX Record forwarded to Ct of Appeals.

10-15-88  
CROSS APPEAL NO. X88-3468  
CASE NUMBER 88-3325

Circuit 5 Appeal S from Eastern District of Louisiana at New Orleans APC 07-07-88

Date docketed 5-13-88 \$65 Fee Paid in D.C. (Both) Judge Frederick J. R. Heebe

Date Notice of Appeal Filed 05-11-88 APC 5-25-88

D.C. Docket Number CA-85-4728-B (3) Reporter Marilyn Young

MERCEDEL W. MILES, Individually  
and as Administratrix of the  
Succession of LUDWICK ADAM TORREGANO,

Plaintiff-Appellant  
Cross-Appellee,

versus

CLIFFORD A. MELROSE, ET AL.,

Defendants,

APEX MARINE CORPORATION,  
WESTCHESTER  
MARINE SHIPPING COMPANY, INC. and  
ARCHON MARINE COMPANY,

Defendants-Third Party  
Plaintiffs-Appellees-  
Cross-Appellants,

and  
AERON MARINE COMPANY,  
Defendant-Appellee,

versus

SEAFARERS INTERNATIONAL UNION,  
ATLANTIC, GULF, LAKES, AND  
INLAND WATERS DISTRICT, AFL-CIO,

Defendant-Third Party Defendant-Appellee.

JUL 7 1988 Record on Appeal  
 3-9-89 Case Argued  
 09/11/89 Opinion Rendered  
 SEP 25 1989 Petition for Rehearing (J)  
                   ☒ Appellant ☒ Reg.  
 SEP 25 1989 Petition for Rehearing (J)  
                   ☒ Appellant ☒ En Banc  
 10-11-89 Order Denying Rehearing  
 2-5-90 Notice of Flg. of Cert. Pet. on 1-8-90  
 2-28-90 Order of S.C. \_\_\_\_\_ Denied ☒ Granted  
                   2-26-90

MINUTE ENTRY:

HEEBE, J.

JANUARY 21, 1988

MOTIONS:

[TITLE OMITTED IN PRINTING]

AT THE CLOSE OF PLAINTIFF'S CASE:

MOTION OF DEFENSE TO STRIKE CLAIM OF JOSEPH OSCAR TERREGANO FOR LOSS OF SOCIETY, ARGUMENT, MOTION GRANTED

MOTION OF DEFENSE FOR DIRECTED VERDICT TO STRIKE CLAIM OF MERCEDEL MILES FOR LOSS OF SOCIETY, ARGUMENT, DENIED

UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF LOUISIANA

MERCEDEL W. MILES,  
 Individually and as  
 Administratrix of the  
 Succession of LUDWICK  
 ADAM TORREGANO

CIVIL ACTION

NO. 85-4728

SECTION "B"

versus

CLIFFORD A. MELROSE,  
 APEX MARINE CORP.,  
 WESTCHESTER MARINE  
 SHIPPING CO., INC.,  
 AND ABC INSURANCE CO.

INTERROGATORIES

1. Were any of the defendants, Apex Marine Corporation, Westchester Marine Shipping Co., and Archon Marine Co., negligent?

Yes ☒ No \_\_\_\_\_

If your answer to Question No. 1 is "Yes," then proceed to Question No. 2. If your answer to Question No. 1 is "No," then skip Question No. 2 and proceed to Question No. 3.

2. Did the negligence of either Apex Marine Corporation, Westchester Marine Shipping Co. and Archon Marine Co. play a part, even the slightest, in causing Ludwick Torregano's death?

Yes ☒ No \_\_\_\_\_

Proceed to Question No. 3.

3. Was the M/V ARCHON unseaworthy?

Yes \_\_\_\_\_ No ☒



If your answer to Question No. 3 is "Yes," then proceed to Question No. 4. If your answer to Question No. 3 is "No," skip Question No. 4 and proceed to "Directions for Answering the Remaining Questions".

4. Was the unseaworthiness of the MV ARCHON a proximate cause of Ludwick Torregano's death?

Yes \_\_\_\_\_ No. ✓

Proceed to "Directions for Answering the Remaining Questions".

#### DIRECTIONS FOR ANSWERING THE REMAINING QUESTIONS

If you answered either or both Questions No. 2 and 4 "Yes," then go on to Question No. 5. If you answered both Questions No. 2 and 4 "No," or if you left both unanswered, then skip the remainder of the questions as your deliberations are finished.

5. Was the deceased Ludwick Torregano, contributorily negligent?

Yes ✓ No. \_\_\_\_\_

If your answer is "Yes," proceed to Question No. 6. If your answer is "No," skip Question No. 6 and 7 and proceed to Question No. 8.

6. Was Ludwick Torregano's negligence a proximate cause of his death?

Yes ✓ No \_\_\_\_\_

If your answer is "Yes," proceed to Question No. 7. If your answer is "No," skip Question No. 7 and proceed to Question No. 8.

7. To what extent, expressed in percentage, did Ludwick Torregano's negligence contribute to his death?

07%

Proceed to Question No. 8.

8. If your answer to Question No. 2 or Question No. 4 is "Yes," what amount in dollars do you find would fairly and adequately compensate the Estate of Ludwick Torregano for Ludwick Torregano's pain and suffering, if any, prior to his death? In reaching this figure you are *not* to deduct any percentage or sum representing Ludwick Torregano's contributory negligence, as the Judge will make that reduction, if required.

\$140,000

Proceed to Question No. 9.

9. If your answer to Question No. 2 or Question No. 4 is "Yes," is the plaintiff, Mercedel Miles, entitled to recover damages for her loss of support and services from the decedent?

Yes ✓ No \_\_\_\_\_

If your answer is "Yes," proceed to Question No. 10. If your answer is "No," skip Question No. 10 and proceed to Question No. 11.

10. What amount in dollars do you find would fairly and adequately compensate plaintiff, Mercedel Miles, for her loss of support and services from the decedent? In



reaching this figure you are *not* to deduct any percentage or sum representing Ludwick Torregano's contributory negligence, as the Judge will make that reduction if required.

\$7800 \_\_\_\_\_

Proceed to Question No. 11.

11. If your answer to Question No. 2 or Question No. 4 is "Yes," is the plaintiff, Joseph Torregano, entitled to recover damages for his loss of services from the decedent?

Yes \_\_\_\_\_ No. ☒ \_\_\_\_\_

If your answer is "yes," proceed to Question No. 12. If your answer is "No," skip Question No. 12 and proceed to Question No. 13.

12. What amount in dollars do you find would fairly and adequately compensate plaintiff, Joseph Torregano, for his loss of services from the decedent? In reaching this figure you are *not* to deduct any percentage or sum representing Ludwick Torregano's contributory negligence, as the Judge will make that reduction, if required.

\$ NA \_\_\_\_\_

Proceed to Question No. 13.

13. Was the plaintiff, Mercedel Miles, financially dependent upon the decedent, Ludwick Torregano?

Yes \_\_\_\_\_ No ☒ \_\_\_\_\_

If your answer is "Yes," proceed to Question No. 14. If your answer is "No," skip Questions No. 14 and No. 15

and return to the courtroom as your deliberations are finished.

14. If your answer to question No. 14 and Question No. 13 is "Yes," is the plaintiff, Mercedel Miles entitled to recover damages for her loss of society with the decedent?

Yes \_\_\_\_\_ No ☒ \_\_\_\_\_

If your answer is "Yes", proceed to Question No. 15. If your answer is "No," skip Question No. 15 and return to the courtroom as your deliberations are finished.

15. What amount in dollars do you find would fairly and adequately compensate plaintiff, Mercedel Miles for her loss of society with the decedent? In reaching this figure you are *not* to deduct any percentage or sum representing Ludwick Torregano's contributory negligence as the Judge will make that deduction, if required.

\$ NA \_\_\_\_\_

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

MERCEDEL W. MILES,  
ET AL

versus

CLIFFORD A. MELROSE,  
ET AL

CIVIL ACTION  
NO. 85-4728

SECTION B (3)

JUDGMENT

DATE OF ENTRY FEB 29 1988

This matter having come on for trial on Tuesday, January 19, 1988, and having been submitted to the jury on Friday, January 22, 1988, and in consideration of the jury's responses to the special interrogatories and, after a polling of the jury, in accordance with the jury's verdict on Saturday, January 23, 1988,

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of the plaintiff, Mercedel W. Miles, Individually and as Administratrix of the Succession of Ludwick Adam Torregano, and against the defendants, Apex Marine Corporation, Westchester Marine Shipping Company and Archon Marine Company under the Jones Act, finding defendants negligent in the death of Ludwick A. Torregano.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of defendant, Aeron Marine Company, and against the plaintiff, Mercedel W. Miles, Individually and as Administratrix of the Succession of Ludwick Adam Torregano, finding that the vessel M/V ARCHON was not unseaworthy at the time of the incident.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of the plaintiff, Mercedel W. Miles, Individually and as Administratrix of the Succession of Ludwick Adam Torregano, and against the defendants, Apex Marine Corporation, Westchester Marine Shipping Company, and Archon Marine Company, in the amount of ONE HUNDRED FORTY-THOUSAND AND NO/100 (\$140,000.00) DOLLARS for the pain and suffering of Ludwick A. Torregano prior to his death, to be reduced by 7%, or NINE THOUSAND EIGHT HUNDRED AND NO/100 (\$9,800.00) DOLLARS, the amount of contributory negligence found on the part of the deceased, Ludwick A. Torregano, together with legal interest thereon from date of judgment until paid and all costs of these proceedings:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of the plaintiff, Mercedel W. Miles, Individually and as Administratrix of the Succession of Ludwick Adam Torregano and against the defendants, Apex Marine Corporation, Westchester Marine Shipping Company and Archon Marine Company, in the amount of SEVEN THOUSAND, EIGHT HUNDRED AND NO/100 (\$7,800.00) DOLLARS for Mercedel Miles' loss of support and services of the decedent, Ludwick A. Torregano, to be reduced by 7%, or FIVE HUNDRED-FORTY-SIX AND NO/100 (\$546.00) DOLLARS, the amount of contributory negligence found on the part of the deceased, Ludwick A. Torregano, together with legal interest thereon from date of judgment until paid and all costs of these proceedings.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of the

defendants, Apex Marine Corporation, Westchester Marine Shipping Company and Archon Marine Company and against the plaintiff, Mercedel W. Miles Individually and as Administratrix of the Succession of Ludwick Adam Torregano, denying thereto any claim for loss of society.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of the defendants, Apex Marine Corporation, Westchester Marine Shipping Company and Archon Marine Company, and against the plaintiff, Mercedel W. Miles appearing on behalf of the decedent's father, Joseph Torregano, denying to Joseph Torregano any claim for loss of services.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in accordance with the order of this Court entered on September 9, 1987, dismissing the complaint of plaintiff and the third-party complaint of Apex Marine Corporation, and Westchester Marine Shipping Company, Inc. against the Seafarers International Union, Atlantic, Gulf, Lakes and Inland Waters District, AFL-CIO, there be judgment herein in favor of the defendant, Seafarers International Union, Atlantic, Gulf, Lakes and Inland Waters District, AFL-CIO, and against the plaintiff, Mercedel W. Miles, Individually and as Administratrix of the Succession of Ludwick Adam Torregano, and the defendants/third-party plaintiffs, Apex Marine Corporation, and Westchester Marine Shipping Company, Inc., each party to bear its own costs.

New Orleans, Louisiana, this 29th day of February, 1988.

Judge Frederick J.R. Heebe

---